

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on March 20, 2003 at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 323, 1/31/2003; HB 338,
2/3/2003; HB 354, 2/8/2003

Executive Action: HB 196, HB 438, HB 183, HB
159, HB 323, HB 338

HEARING ON HB 354

Sponsor: REPRESENTATIVE BRAD NEWMAN

Proponents: Jim Brown, Business Standards Division,
Department of Labor and Industry
Sam Debree, make-up artist

Opponents: Carl Griffin, National Cosmetology
Association of Montana

Opening Statement by Sponsor:

REPRESENTATIVE BRAD NEWMAN, HD 38, Butte, brought forth HB 354, which is a bill to exempt media make-up artists from cosmetology licensure. The Board of Cosmetology was created to govern established cosmetology businesses and their employees. He said media make-up artists are not employed by or associated with any established cosmetology businesses. He said the duties of cosmetologist and make-up artists are dissimilar. He said this current and unnecessary control might indirectly affect Montana's ability to attract motion picture enterprises to the state.

Proponents' Testimony:

Jim Brown, Business Standards Division, Department of Labor and Industry, offered his support of the bill.

Sam Debree, make-up artist, said he thought this idea needed to be dealt with due to the differences between cosmetology and make-up in the media industry. He said the Board of Cosmetology also supports this change.

Opponents' Testimony:

Carl Griffin, National Cosmetology Association of Montana, stated this bill would take away from the licensed cosmetologists, nail technicians, barbers, electrologists, etc. He said this bill proposes to allow a person with a contract with a media company to perform services without a license. He said there are differences in the business, but they should be licensed. He said there are many cosmetologists in the state that would be able to do these services.

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Questions from Committee Members and Responses:

SENATOR CAROLYN SQUIRES asked if a media company could still hire cosmetologists. **Mr. Debree** said yes. He said the way the statute is written now if a production company brought their own makeup artists, etc. they could not work in this state because they don't have a license.

SENATOR VICKI COCCHIARELLA wanted to know where the coordination instructions were located in HB 196. **REP. NEWMAN** said the exemption is covered in section 2 of this bill.

SEN. COCCHIARELLA asked what kind of precautions and standards does a makeup artist take when he is applying makeup to the public. **Mr. Debree** replied that he follows the standards that he was taught by other makeup artists. **SEN. COCCHIARELLA** said cosmetologists have health standards and inspections that protect the public and what protections will the public have if they are exempt from those requirements. **Mr. Debree** said he always carries cleaning and sterilization supplies with him, etc. **SEN. COCCHIARELLA** asked what were the consequences if a person got an infection, etc. **Mr. Debree** said they may be held responsible for any damages and would probably be taken off of that production.

SENATOR KEN HANSEN asked if he had a degree in makeup artistry. **Mr. Debree** said yes from Montana State University and he did an internship in Billings and has worked with other makeup artists, etc. **SEN. HANSEN** asked if these other artists were from out of state and do they have the same criteria as they do here in Montana. **Mr. Debree** said most makeup artists are not licensed cosmetologists and their training usually comes from an apprentice program. He said the test for cosmetology covers almost nothing about makeup so they are very dissimilar.

Closing by Sponsor:

REP. NEWMAN closed by saying that by passing this bill; they are not excluding cosmetologists from performing these services in this industry. He said media makeup artists do not provide services to the general public. He said they do corrective makeup for lighting situations, apply liquid latex for effects, and they apply facial hair, etc. He said cosmetologist's work on hair coloring, shaping, thermal curling, chemical waving, etc. He said there are cases where cosmetologists cannot provide the services needed in the theatrical business.

{Tape: 1; Side: A; Counter: 20.8}

HEARING ON HB 338

Sponsor: REPRESENTATIVE JIM KEANE

Proponents: Jerry Driscoll, AFL/CIO
Bob Pavlovich, IBEW Local 233
Aiden Myhre, Montana Chamber of Commerce
Riley Johnson, National Federation of Independent
Businesses
Don Judge, Teamsters Local 190

Opponents: None

Informational Witnesses: Kevin Braun, Department of Labor and
Industry

Opening Statement by Sponsor:

REPRESENTATIVE JIM KEANE, HD 36, Butte, stated that HB 338 increases the unemployment benefit to 66.5 percent and it increases the weekly benefit from 26 weeks to 28 weeks. He said it changes the state trigger so that if the fund-balance drops, there would be no increase to the employers. He passed out a handout concerning this bill EXHIBIT (bus59a01). He said employers are getting a \$10M discount each year because there is \$20M in interest coming off of this trust. He said this bill puts about \$9M dollars into the economy over the next two years which he felt would be turned over about three times. He said this fund could only be spent on unemployed workers.

{Tape: 1; Side: B; Counter: 0.8}

Proponents' Testimony:

Jerry Driscoll, AFL/CIO noted that on page 1, line 21-22 would ensure that the rate for the employer would not go up. He said the taxable wage base goes up every year and this is why there is a higher payout. He said if they had a booming economy the ratio may trigger increase. He said the increase in weeks would only be for full time workers.

Bob Pavlovich, IBEW Local 233, said they have members in their organization that need this and if it is not there they will have to leave the state to find work.

Aiden Myhre, Montana Chamber of Commerce, said when they look at the interest rates that are generated on this bill, they are also wary that interest rates are changing constantly. She said they also have some concerns about the future and the usage of these funds. She said they support this bill and would like to work closely with it through the interim.

Riley Johnson, National Federation of Independent Businesses, said they support the idea that this money will be used for what it was intended for. He said they also like the fact that they will be revisiting this in two years to see if it is justifiable or not. He said in the 1980's they went broke and they had to borrow money from the Federal Government and they don't want to go back to that.

Don Judge, Teamsters Local 190, stood in support of **HB 338**.

Informational Witness Testimony: **Kevin Braun, Department of Labor and Industry**, distributed the actuarial study referred to previously by **REP. KEANE, EXHIBIT (bus59a02)** and offered to answer any questions.

{Tape: 1; Side: B; Counter: 9.0}

Questions from Committee Members and Responses:

SEN. COCCHIARELLA asked what was the cause of the fund going broke. **Mr. Braun** said the fund had a couple of periods where it was insolvent. He said high unemployment rates were a factor and they were also under a different funding mechanism at the time.

Committee had a short break with a presentation from an elementary school.

{{Tape: 1; Side: B; Counter: 18.7}}

SENATOR SHERM ANDERSON wanted to know how the department determines surplus and the guidelines that they follow. **Mr. Braun** said the federal government required a 24-month surplus based on certain criteria. He said since that time they have been relaxing those standards somewhat and this is part of the reason for the study and the recommendation was 18 months.

Closing by Sponsor:

REP. KEANE felt it was a good step forward and appreciated the support and the actuarial study. He said he was going to follow

this because he feels there are more things that can be done with this trust.

HEARING ON HB 323

Sponsor: REPRESENTATIVE LARRY JENT

Proponents: Bob Griffin, Crowley Law Firm in Billings
Brad Griffin, Montana Retail Association
Aiden Myhre, Montana Chamber of Commerce
Pat Haffe, Secretary of State's Office

Opponents: NONE

Opening Statement by Sponsor:

REPRESENTATIVE LARRY JENT, HD 29, East side of Bozeman, said this bill discusses uniform rules for businesses and attorneys so that as they do business across state lines they have uniform rules from state to state. He said this bill has been enacted in about 25 states and is mostly described in the title. He said it replaces the statutory list of classifications on page 10 and replaces them with the classifications formulated by the U.S. Trademark Office. He said the bill is favorable to small businesses because it gives them the advantages previously available only under the federal law even if they only sell in one state. He stated it cuts the state's trademark registration renewal period from 10 to 5 years so that trademarks that aren't being used will become available sooner to others. He said the bill is supported by the Secretary of States office and is supported by large and multi-state businesses because of the uniformity of the law. He stated it would also contribute to consumer confidence.

{{Tape: 2; Side: A; Counter: 1.4}}

Proponents' Testimony:

Bob Griffin, Crowley Law Firm in Billings, said he would like to be able to advise his clients that they have similar remedies under Montana Law as under the Federal Law. He said the big difference between registering a trademark as opposed to the Federal Government is it is far more expensive and time consuming to register at the federal level. He said this would be available for people who don't want to incur the expense of registering at the federal level or businesses that only operate within Montana. He said this bill is supported by big and small businesses.

Brad Griffin, Montana Retail Association, said this bill would make it easier if someone has a name, etc. that they want to register.

Aidan Myhre, Montana Chamber of Commerce, said there are many brilliant ideas that come from Montanans and this gives them the opportunity to protect their ideas.

Pat Haffe, Secretary of State's Office, said they support the bill.

{{Tape: 2; Side: A; Counter: 4.9}}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. COCCHIARELLA read lines 10-11, page 5, and asked why two was changed to three. **Mr. Griffin** said the specimens are the labels etc. and three would enable the Secretary of States Office to have sufficient copies for filing, etc. **SEN. COCCHIARELLA** read line 21, page 5 and asked what that language meant. **Mr. Griffin** said this authorizes the Secretary of States Office to review trademark applications to determine if they meet all of the requirements. He used Wheat Montana as an example of this. **SEN. COCCHIARELLA** read page 7, line 25 and asked what the reason for this was. **Mr. Griffin** said this is to be consistent with federal law. **SEN. COCCHIARELLA** asked if there are a lot of legal battles over trademarks in Montana. **Mr. Griffin** said yes they arise from time to time.

CHAIRMAN DALE MAHLUM asked about the Moose head logo and Moose drool Beer. **Mr. Griffin** said it was the Moose head logo that was the problem and he didn't know if it had been resolved.

Closing by Sponsor:

REP. JENT urged support.

{Tape: 2; Side: A; Counter: 10.9}

EXECUTIVE ACTION ON HB 323

Motion/Vote: **SEN. SQUIRES** moved that HB 323 BE CONCURRED IN.
Motion carried 8-0.

EXECUTIVE ACTION ON HB 338

Motion: SEN. SQUIRES moved that HB 338 BE CONCURRED IN.

Discussion:

SENATOR KELLY GEBHARDT said even though this fund is sound they could also change that increasing amount lowering the rate to employers and he felt that was appropriate rather than raising the percentage.

CHAIRMAN MAHLUM asked if that was about the lowest percentage rate they could be at. Mr. Braun said they are at a schedule 1.

SEN. COCCHIARELLA said she is very happy to see that the actuarial study has finally been done.

CHAIRMAN MAHLUM said the reason the fund went down in the 1980's was because the extraction industries were booming and then they went down.

Vote: Motion carried 7-1 with GEBHARDT voting no.

EXECUTIVE ACTION ON HB 354

Motion/Vote: SEN. COCCHIARELLA moved that HB 354 BE CONCURRED IN. Motion carried 8-0.

{Tape: 2; Side: A; Counter: 17.5}

EXECUTIVE ACTION ON HB 159

Motion: SEN. SQUIRES moved that HB 159 BE CONCURRED IN.

Motion: SEN. SQUIRES moved the amendments for HB 159
EXHIBIT(bus59a03) (HB015901.aem) .

Discussion:

Eddye McClure, Legislative Staff, discussed the amendments, Exhibit 3.

Vote: Motion carried 8-0.

Motion/Vote: SEN. SQUIRES moved that HB 159 BE CONCURRED IN AS AMENDED. Motion carried 8-0.

{Tape: 2; Side: A; Counter: 24.0}

EXECUTIVE ACTION ON HB 183

Motion: SEN. GEBHARDT moved that HB 183 BE CONCURRED IN.

Motion: SEN. GEBHARDT moved the amendments for HB 183, **EXHIBIT** (bus59a04) (HB018301.aem) .

Discussion:

Eddy McClure explained the amendments, (**EXHIBIT 4**) .

Frank Cote, Health Insurance Assoc. of America, said the auditor's office is okay with changing the effective date however they do not support the first part of the amendments. He said they are asking the insurance companies to file a form for prior approval and they do not support that.

Tayna Ask, Blue Cross/Blue Shield, said their main concern is having the law apply to policies and contracts on and after January 1, because it allows them time to gear up for this change.

SENATOR GLENN ROUSH handed out a letter from **Claudia Clifford, State Auditor's Office** **EXHIBIT** (bus59a05) .

SEN. GEBHARDT turned in a letter from **Frank Cote, Health Insurance Assoc. of America** **EXHIBIT** (bus59a06) . **Mr. Cote** commented on this letter.

SEN. COCCHIARELLA said there seems to be some confusion on whether they need the form or not to be approved. She said an insurance company could send out a form that is illegal and not in compliance with the code and be fined \$25,000. She wondered if insurers were currently being fined for forms that are not in compliance with the law now. **Mr. Cote** said when an insurance policy is filed it is a very complicated form and it needs to have prior approval before it is sold. He said this form is a little bit different that says if a person loses coverage then this form will show that they had prior coverage with a company. He said it allows the insurer to get coverage without any lapses. He said the auditor's concern is that the law requires carriers

to list the Montana Comprehensive Health Association form and their phone number and some carriers are not complying with that law. He said his concern is that if the form is submitted for approval and it doesn't get approved in a timely manner then they are out of compliance and if the form is wrong it is in violation of the law also.

SEN. COCCHIARELLA felt it is a matter of effective dates and timing. **Mr. Cote** said they are requiring additional form filing which is expensive to do and if it is not done in a timely manner then they have violated the law.

SEN. COCCHIARELLA said if they adopt these amendments, companies could be targeted to \$25,000 fines.

SEN. GEBHARDT said the auditor's office should of made a form that they were happy with and distributed it to insurance companies so that they only have one form. He felt he should withdraw his motion and make a substitute motion for a do not concur.

Substitute Motion/Vote: **SEN. GEBHARDT** made a substitute motion that HB 183 BE INDEFINITELY POSTPONED. Substitute motion failed 1-8 with SENATORS ROUSH, ANDERSON, COCCHIARELLA, MAHLUM, HANSEN, RYAN AND SQUIRES voting no.

{Tape: 2; Side: B; Counter: 10.4}

Discussion:

SEN. COCCHIARELLA suggested they go back to the original motion.

SENATOR DON RYAN said he would like more explanation of the amendments because these amendments do two things by taking a section out of the bill and the change of the effective date. He wondered if those had to be together or could they be segregated.

Eddye McClure said amendments 2 and 8 are the applicability dates and the rest deal with taking a section out of the bill.

Substitute Motion/Vote: **SEN. RYAN** made a substitute motion to segregate 1,3,4,5,6,7 of the amendments. Motion carried 7-1 with SENATOR MIKE SPRAGUE voting no.

Substitute Motion: **SEN RYAN** made a substitute motion to segregate 2 and 8 of the amendments.

Discussion:

SEN. COCCHIARELLA felt that **SEN. GEBHARDT** had a great idea and she is going to vote for these amendments. She felt if the committee passed this bill they could write a letter to the State Auditor's office recommending that they create a form that can be sent to those companies that is standard, etc.

SEN. GEBHARDT felt that January 2004 is necessary and would give the companies time to prepare for this.

Vote: Motion carried 8-0.

{Tape: 2; Side: B; Counter: 16.7}

Discussion:

SENATOR MIKE SPRAGUE explained an amendment that he would like inserted that addressed if an employer doesn't pay his fees, etc.

Ms. Ask said this amendment addresses the concern that an insurance company would be responsible with the notification provision for paying claims for which they had not received payment of. She said the insurance contract is sitting out there and no premium has been paid but because the employees have not been notified of the cancellation they would be required to continue coverage even though the policy had not been paid for. She said this amendment requires the insurance company to hold claims for that fifteen-day period for which they have not received payment and send notification to the employees.

SEN. SPRAGUE asked if that claim could be held if an employer went bankrupt or out of business. **Ms. Ask** said yes.

Eddye McClure explained where the amendments would be inserted into the bill.

Motion/Vote: **SEN. SPRAGUE** moved an amendment be inserted on page 3, line 28 and page 3, line 29, (see EXHIBIT 4 amendment #4 and #5). Motion carried 8-0.

Motion/Vote: **SEN. COCCHIARELLA** moved that HB 183 BE CONCURRED IN AS AMENDED. Motion carried 8-0.

SEN. SPRAGUE said he would like to change his vote from a NO to a YES on the first set of amendments.

SEN. COCCHIARELLA asked the State Auditor's office if they would be willing to create a form to send out to the insurers. **Ms. Clifford** said it is in their rules on what is needed on this form. She said there is a national form and also a state form that requires a few other things. She said companies that are not based in Montana only use the national format and they don't pay attention to what the state requirements are. **SEN. COCCHIARELLA** asked if they could create a standardized form. **Ms. Clifford** said they would try and see if it would work.

SEN. GEBHARDT felt that by sending them electronically through email would be a good idea and if they had a standardized form it would be easier for everyone. **Ms. Clifford** said they could send them a form but they couldn't require them to use it.

CHAIRMAN MAHLUM asked why couldn't they require them to use the form. **Ms. Clifford** said it is not in their statutes that they require them to use it, but they can recommend it.

{Tape: 3; Side: A; Counter: 4.3}

EXECUTIVE ACTION ON HB 196

Motion: **SEN. SQUIRES** moved that HB 196 BE CONCURRED IN.

Discussion:

SEN. SQUIRES felt that these boards should be able to come together and work out a compromise.

SEN. GEBHARDT said there would be a reduction in licensing fees but not very much.

SEN. SPRAGUE said this is dying trade and it is for little towns that still have the old barber pole and these professions deal with many of the same issues.

SEN. COCCHIARELLA felt that there should be four cosmetologists on the board but she didn't make any amendments for it.

CHAIRMAN MAHLUM asked the Department of Labor to comment. **Kevin Braun, Department of Labor** said there would actually be four cosmetologists on the board because the electrologist is a cosmetologist. He said this bill was a long time in the making with over two years of compromise, etc.

SEN. COCCHIARELLA said she does not like this because the boards do not represent necessarily what the people are doing on the ground.

Vote: Motion carried 8-1 with **SEN. COCCHIARELLA** voting no.

CHAIRMAN MAHLUM said he is going to appoint a subcommittee for **HB 130** and will consist of **Sen. Anderson, (Chair), Sen. Hansen and Sen. Gebhardt.**

ADJOURNMENT

Adjournment: 10:55 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus59aad)